

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



TRANSCRIPT OF RECORD

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Court of Appeals of the District of Columbia

APRIL TERM, 1933

No. 6062

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443

JOS. L. TEPPER, APPELLANT,

*vs.*

JAMES S. FRASER; L. H. REICHELDERFER, H. B.  
CROSBY, J. C. GOTWALS, COMMISSIONERS OF  
THE DISTRICT OF COLUMBIA.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF  
COLUMBIA.

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FILED SEPTEMBER 5, 1933.

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THE DISTRICT OF COLUMBIA, APPELLEES.

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## INDEX.

|                                                                                                          | Original | Print |
|----------------------------------------------------------------------------------------------------------|----------|-------|
| Caption .....                                                                                            | <i>a</i> | 1     |
| Petition to quiet title and remove cloud.....                                                            | 1        | 2     |
| Plaintiff's Exhibit "A".....                                                                             | 12       | 12    |
| Answer to original bill.....                                                                             | 16       | 15    |
| Motion to dismiss.....                                                                                   | 18       | 17    |
| Motion to amend.....                                                                                     | 19       | 18    |
| Order granting motion to amend, &c.....                                                                  | 19       | 18    |
| Order overruling motion to dismiss and sustaining motion to<br>strike, etc.....                          | 19       | 18    |
| Answer of the defendant James S. Fraser to amended bill..                                                | 20       | 19    |
| Memorandum of court.....                                                                                 | 24       | 22    |
| Findings of fact.....                                                                                    | 24       | 22    |
| Decree dismissing bill of complaint.....                                                                 | 26       | 24    |
| Appeal noted by plaintiff and bond for costs fixed at \$100 or<br>\$200 to operate as a supersedeas..... | 27       | 25    |
| Memorandum: Bond on appeal for \$100 approved and filed.                                                 | 27       | 25    |
| Assignment of errors.....                                                                                | 27       | 25    |
| Designation of record.....                                                                               | 29       | 26    |
| Clerk's certificate.....                                                                                 | 30       | 26    |



# Court of Appeals of the District of Columbia

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No. 6062.

JOS. L. TEPPER, Appellant,

VS.

JAMES S. FRASER, L. H. REICHELDERFER, H. B. CROSBY, J. C.  
GOTWALS, Commissioners of the District of Columbia.

---

*a* Supreme Court of District of Columbia.

No. 53341. Equity.

JOS. L. TEPPER, Plaintiff,

VS.

JAMES S. FRASER, L. H. REICHELDERFER, H. B. CROSBY, J. C.  
GOTWALS, Commissioners of the District of Columbia,  
Defendants.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1      *Petition to Quiet Title and Remove Cloud.*

Filed September 1, 1931.

In the Supreme Court of the District of Columbia.

No. 53341. Equity.

JOS. L. TEPPER, Plaintiff,

vs.

JAMES S. FRASER, L. H. REICHELDERFER, H. B. CROSBY, J. C. GOTWALS, Commissioners of the District of Columbia, Defendants.

Your petitioner respectfully represents:

1. That he is a citizen of the United States, a resident of Maryland, and files this petition in his own right for the relief hereinafter set forth.

2. That James S. Fraser is, according to the information and belief of the plaintiff, a citizen of the United States, a resident of the Town of Takoma Park, State of Maryland, adjacent to the District of Columbia, and is sued in his own right as hereinafter set forth.

3. That L. H. Reichelderfer, H. B. Crosby and J. C. Gotwals are citizens of the United States and are sued herein as Commissioners of the District of Columbia, a municipal corporation.

4. That plaintiff is the record owner of lot 71 in Owen H. Fowler's subdivision of lots in square numbered fifty-one hundred and twenty-six (5126), being a part of the tracts of land called "Beall's Adventure" and "Fife Enlarged" as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 51 at folio 27. The approximate value of the improvements on said lot which consists of a store and apartment over it is \$4500.00

2      5. On Dec. 13, 1926, and sometime prior thereto, the title to the above described real estate stood in the name of one William Sylvester & Cynthia I. Sylvester and on said date they executed a deed of trust to David L. Blanken and Sophie E. Spector, recorded in the land records of the District of Columbia on Dec. 24, 1926, in Liber 5896, folio 306 securing the plaintiff in the sum of \$4500.00 and thereafter, the said William Sylvester & Cynthia I. Sylvester defaulted in the terms of said trust and on July 6,

1927, said property was sold by virtue of a foreclosure under the terms of said deed of trust at public auction and bought in by the plaintiff; thereafter the trustees under said trust, David L. Blanken and Sophie E. Spector, conveyed title to said real estate to the plaintiff herein by deed recorded July 22, 1927, in Liber 5917, folio 16, in the Office of the Recorder of Deeds for the District of Columbia.

6. On, to wit: August 1, 1927, the plaintiff, his wife joining, deeded said real estate to one Jacob Dodd, said deed having been duly recorded on August 16, 1927, in the land records in the Office of the Recorder of Deeds for the District of Columbia, in Liber 3930, folio 149, and said Jacob Dodd, his wife joining, executed and delivered simultaneously with the passing of title to him a deed of trust to Simon Flegman & Hyman Goldblatt as Trustees, to secure the plaintiff in the sum of \$5070.00 which deed of trust was duly recorded on August 16, 1927, in Liber 5930, folio 160, of the land records in the Office of the Recorder of Deeds for the District of Columbia. The title to said real estate stood in the name of said Jacob Dodd from said August 1, 1927, to Dec. 28, 1929, and by reason of having defaulted in the payment of the trust given to the plaintiff herein as set forth in the preceding paragraph, said real estate was, after due notice and advertisement in the newspapers in

accordance with the terms of the trust, foreclosed  
3 and sold by the trustees to one Lucille Veach who acted in the purchase of same as representative and trustee for the plaintiff herein. A deed conveying title to said real estate from the trustees under the deed of trust from Dodd to said Lucille Veach was recorded on Sept. 28, 1929, in Liber 6407, folio 37, in the Office of the Recorder of Deeds for the District of Columbia. Thereafter on August 28, 1931, the said Lucille Veach conveyed and transferred title to the real estate described in these proceedings to the plaintiff herein by deed recorded on said August 31, 1931, in the Office of the Recorder of Deeds for the District of Columbia.

7. Jacob Dodd not only defaulted under the terms of the trust hereinabove referred to but failed to pay the taxes to the District of Columbia for the fiscal year 1928, whereupon the defendants, as Commissioners of the District of Columbia, proceeded to and did advertise said property for sale for non-payment of taxes starting Dec. 12, 1928,



and inserted said advertisement in the Washington Times & Washington Herald, but although the said William Sylvester and Cynthia Sylvester had been divested of all title, rights and interest in and to said property by trustees' deed of July 14, 1927, recorded July 22, 1927, in Liber 5917, folio 146, of the land records of the District of Columbia, under and by virtue of the foreclosure proceedings aforesaid, the said defendants, the Commissioners aforesaid, continued to list said property still in the name of said William Sylvester & Cynthia Sylvester or William Sylvester alone in the advertisements for tax sale, with the result that the true legal owner at that time, Jacob Dodd, had no notice whatever and was not afforded any opportunity of preventing a sale of said real estate for taxes as aforesaid.

8. On Jan. 15, 1929, the defendants, the Commissioners as aforesaid, pretended to and undertook to sell said real estate to one C. B. Rout for the sum of \$52.68, and thereafter attempted to and issued an alleged certificate to said C. B. Rout certifying to the purchase of said real estate by him at said alleged tax sale; plaintiff says that by reason of the circumstances, that is to say, by reason of the failure to list said real estate in the advertisements and notice in the name of the then legal and beneficial owner, Jacob Dodd, the said sale and the issuance of a certificate thereafter was wholly null and void and of no legal effect whatsoever.

9. Thereafter, some time between Jan. 15, 1929, and prior to June 15, 1931, the exact date being unknown to the plaintiff, the said C. B. Rout transferred and assigned all of his rights, title and interest in and to said alleged certificate to the defendant herein, James S. Fraser.

10. On April 16, 1931, the defendants, L. H. Reichelderfer, H. B. Crosby, J. C. Gotwals, as Commissioners of the District of Columbia, went through the form of issuing to the defendant, James S. Fraser, a fee simple deed to the property herein described based upon and in consideration of said certificate of tax sale issued to C. B. Rout and assigned to the defendant, Fraser as aforesaid; said deed is recorded in Liber 6550, folio 469, of the land records of the District of Columbia, a certified copy of said deed is attached hereto marked plaintiff's Exhibit A and made part hereof and prayed to be read in connection herewith.

11. Plaintiff is advised and so avers that the issuance of said deed by reason of the circumstances set forth herein is a nullity and absolutely void in law, but constitutes a cloud as against said real estate to the detriment and prejudice of this plaintiff. Plaintiff further says that on, to wit: May 4th or 5th, 1931, within two or three days after the issuance of the aforesaid deed by the Commissioners of the District of Columbia to the defendant, Fraser, the following notice was received from said Fraser:

5       “Memo.—Square 5126, Lot 71, D. C., has been deeded me account tax sale for delinquent taxes. If you wish to repurchase lot, I will deed it back for \$297.50. This sum includes preparation of quit claim deed and notary fee. Give me exact name of party to whom quit claim deed is to be made. Send me check or money order and I will mail you deed. If you prefer I will leave deed at my D. C. bank and you can get it upon payment of amount in cash. My telephone Shep. 3062-W.

(From)

J. S. FRASER,  
105 Elm Avenue, Takoma Park, Md.

Miss Lucille Veach, 1203 6th St., N. E.

Thereafter within two or three days from the receipt of above notice from defendant, Fraser, the plaintiff despatched the following communication to him:

“May 8, 1931.

“Mr. J. S. Fraser,  
Takoma Park, Md.

DEAR SIR:

Your notice addressed to Miss Lucille Veach, 1203 6th St., N. E., making demand for \$297.50 for quit claim deed for lot 71, square 5126, has been referred to me for reply, the title to this lot now being in the Guaranty Mortgage Co. of the District of Columbia of which I am President.

Please let me have an itemized statement as to how you arrive at that figure and you will then hear from me further.

Very truly yours,  
(Signed)

JOS. L. TEPPER,  
*President.”*

Said defendant failed to reply to said communication and a second communication was despatched to him ten days later on May 18, 1931, by United States registered mail and is as follows:

“May 18, 1931.

“Mr. J. S. Fraser,  
105 Elm Avenue,  
Takoma Park, Md.

DEAR SIR:

On the 8th instant, I addressed the following communication to you:

6       “Your notice addressed to Miss Lucille Veach, 1203 6th St., N. E., making demand for \$297.50 for quit claim deed for lot 71, square 5126 has been referred to me for reply, the title to this lot now being in the Guaranty Mortgage Co. of the District of Columbia of which I am President.

“Please let me have an itemized statement as to how you arrive at that figure and you will then hear from me further.”

to which to date I have had no reply.

I do not want to assume that you deliberately ignored this request and rather attribute it to your absence from the city or being preoccupied with other matters. This is simply an attempt to insure the receipt of the letter by you and to again ask you for the information, namely, how you arrive at the figure of \$297.50 on the tax sale in which you paid \$52.68.

If I should fail to get your answer after the lapse of a reasonable time, I shall naturally be justified in concluding that you are unwilling to give the information.

Very truly yours,  
(Signed)

JOS. L. TEPPER,  
*President.*”

To this letter, said defendant made the following reply by an undated communication:

“Memo.—As to lot 71, square 5126, I will not quote any lower price but if you care to make me an offer near my



price, I would be glad to give it consideration. I try to meet people half way on these matters, but I must have a good profit on each item.

J. S. FRASER,  
105 Elm Avenue,  
Takoma Park, Md."

12. Thereafter, plaintiff despatched the following communication to defendant:

"August 4, 1931.

"J. S. Fraser, Esq.,  
105 Elm Avenue,  
Takoma Park, Md.

DEAR SIR:

For the past two or three weeks, I have made numerous efforts to reach you on the phone, Shepherd 3062-W, by calling once or twice daily, but have been unable to get any reply. The object of my calling was to arrange an appointment so that I might call upon you and make  
7 a tender for the payment of all monies paid by you, together with the legal rate of interest and expenses in connection with your having obtained a tax sale deed on lot 71, square 5126. I am entirely unwilling to comply with your exactions for a quit claim deed on that lot but am ready and willing to pay such sum of money that you advanced with interest, say even at 12% per annum and all legal and proper expenses.

Inasmuch as I am unable to reach you and do not know your present whereabouts, I take this means of advising you of my readiness and willingness to do as aforesaid. I do not relish the thought of litigation but your hard attitude compels me to resort to it. As a preliminary, however, I wish you would give me an opportunity of making a tender by advising me when and where I can do so and the amount that you actually paid in as I wish to have the cash with me.

Should I not hear from you within a reasonable time, you will make it impossible for me to make such a tender and you will then leave me no alternative, but to file immediately a bill in court to remove the cloud. In any event, I should appreciate the courtesy of a reply from you.

Very truly yours,  
(Signed)

JOS. L. TEPPER,  
President.

In answer to which the defendant made the following reply by memorandum partly in script and partly in print:

“As a compromise to avoid litigation, I submit the following Memo: Square 5126, lot 71, D. C., has been deeded me on account tax sale for delinquent taxes. If you wish to repurchase lot, I will deed it back for \$297.50. This sum includes preparation of quit claim deed and notary fee. Send me check or money order and I will mail you deed. If you prefer I will leave deed at my D. C. bank and you can get it upon payment of amount in cash. (Over.) I suggest that U submit me an offer near my price.

(From) J. S. FRASER,  
105 Elm Ave., Takoma Park, Md.  
GUARANTY MORTGAGE CO.,  
468 La. Ave., N. W., Wash., D. C.”

To this memorandum, the plaintiff despatched the following to said defendant:

8 “August 10, 1931.

“J. S. Fraser, Esq.,  
105 Elm Avenue,  
Takoma Park, Md.

DEAR SIR:

In further reference to obtaining release on lot 71, square 5126, and acknowledging receipt of your memorandum note in answer to my recent registered letter, if I can just get you to give me a statement showing exactly what funds you advanced, I will be perfectly willing to make a reasonable offer in compromise. Without these figures, I am totally in the blind.

You can either give them to me personally if you will tell me when and where I can meet you, or send them to me by mail.

Very truly yours,  
(Signed) JOS. L. TEPPER,  
President.”

The only reply received from defendant was by another memorandum likewise partly in script and partly in print as follows:

"1929 sale acct. taxes 1928 and sewer 2d and 3d install. Memo.: Square 5126, lot 71, D. C., has been deeded me account tax sale for delinquent taxes. If you wish to repurchase lot, I will deed it back for \$297.50. This sum includes preparation of quit claim deed and notary fee. Give me exact name of party to whom quit claim deed is to be made. Send me check or money order and I will mail you deed. If you prefer I will leave deed at my D. C. bank and you can get it upon payment of amount in cash. My telephone Shep. 3062-W.

(From)

J. S. FRASER,

105 Elm Avenue, Takoma Park, Md.

GUARANTY MORTGAGE CO.,

468 La. Ave., N. W., Wash., D. C.

13. In the interim between the first correspondence with the defendant beginning with May 8, 1931, down to the latter part of August, 1931, plaintiff has attempted to reach the defendant by phone calling his residence Shepherd 3062-W in Takoma Park, Md., but was unable to obtain any response although calls were made practically every day for a period of weeks. Thereafter, on to wit: August 17, 1931,

9 plaintiff commissioned Elmer E. Cummins, Esq., Assistant Clerk of the Municipal Court of the District of Columbia to call on the defendant at his residence, premises 105 Elm Ave., Takoma Park, Md., with a view of arranging to make a tender to him of such an amount as is actually due and owing to the defendant; but when he got to said address, he found a note on the door indicating that the house was closed and the defendant could be found at 9th St. and Water Front, North Beach, Md.

14. On, to wit, August 26, 1931, at about noon, the plaintiff personally called on the defendant at said North Beach for the purpose of making him a tender in cash of such funds as he advanced in the tax sale on the above lot and to request of him a quit claim deed thereon; upon request of the plaintiff, the defendant advised him that the only sum he advanced in connection with the tax sale of the lot involved herein was the sum of \$52.68 and that amount, together with interest to date at 12% would be approximately \$75.00. Plaintiff thereupon tendered him \$75.00, but defendant refused and by way of compromise plaintiff again



tendered him \$100.00 in United States legal tender for a quit claim deed but again defendant refused and stated that he would not accept a sum substantially less than \$297.50, but upon inquiry by the plaintiff, refused to commit himself as to how much less than \$297.50 he would accept. Plaintiff had with him and offered to defendant the cash and a quit claim deed for execution by said defendant.

15. Plaintiff here and now tenders himself ready and willing to pay any such sum or sums of money as the court may deem right and proper in accordance with equity and good conscience for the payment of any and all taxes due thereon, and such penalty, costs and expenses, if any, as may be properly chargeable to the real estate herein described, including such costs and charges, if any, as  
10 the court may consider right and proper with respect to the aforesaid attempted tax sale of Jan. 15, 1929, the supposed tax certificate and tax deed issued pursuant thereto and the lien, if any, created thereby.

16. Plaintiff says that the conduct of the defendant is unconscionable, inequitable, oppressive and contrary to public policy; that he not only acts in the premises contrary to all moral precepts even in business, but by his exactions and persistence to hold a cloud over plaintiff's property, he violates the usury laws in an indirect fashion and under cloak of legal protection; plaintiff is without a clear, complete and adequate remedy at law and therefore seeks relief by invoking the aid of this Honorable Court.

Wherefore, the premises considered, the plaintiff prays:

1. That James S. Fraser and the Commissioners of the District of Columbia may be served with process and required to answer the exigencies of this bill, substitute service being had as to such of them as to whom the same may be appropriate.

2. That the defendant, James S. Fraser, may be restrained and enjoined pendente lite from assigning, pledging, transferring or in any manner conveying, disposing of, or parting with, the possession of the supposed tax sale certificate and supposed tax deed for plaintiff's land and premises described in the foregoing and annexed bill, and from making or attempting to make conveyance or disposition, by way of mortgage, trust, deed or otherwise, of the hereinbefore described land and premises of the plaintiff.

3. That the aforesaid attempted tax sale and the supposed tax deed issued in pursuance thereof, be declared null and void and of no effect, and that the defendants, the Commissioners of the District of Columbia, be required to cancel the aforesaid tax sale wherever the same may appear  
11 upon its books and records, and also cancel the tax deed issued on the basis of said sale.

4. That the defendant, James S. Fraser, may be required to surrender and deliver up for cancellation the original supposed tax sale certificate and supposed tax deed issued in pursuance thereof, to plaintiff's land and premises described in the foregoing and annexed bill, and to make conveyance of the said land and premises to the plaintiff.

5. That, by order of decree of this Honorable Court, plaintiff may be permitted forthwith to redeem, from the effect and operation of the attempted tax sale set out in the foregoing and annexed bill and the supposed tax deed issued in pursuance thereof, his lands and premises described in the foregoing and annexed bill, by depositing in the Registry of the Court such sum or sums of money as the court may determine may be fair, just and proper for the purpose, to be there held to await final disposition of this cause or further order of the Court in the premises; and that, in effecting such redemption, the defendant, James S. Fraser, may be required simultaneously to surrender up the original supposed tax sale certificate and the supposed tax deed issued in pursuance thereof, to the plaintiff's said land and premises, for cancellation, and to make conveyance of the said land to the plaintiff, and that the defendants, the Commissioners of the District of Columbia may be required then and there to do all such acts and things as may be necessary and proper in the judgment of the Court to complete and effectuate such redemption of said land and premises.

6. That a rule or rules to show cause may be issued by the Court requiring the defendant, James S. Fraser, to show cause, if any he has, on a day and at a time certain to be therein fixed, why an injunction pendente lite should not be granted in accordance with the 2nd prayer of  
12 this bill and why the 5th prayer of this said bill should not also be granted.



7. And that the plaintiff may have such other and further relief as the nature of this case may require.

JOS. L. TEPPER,  
*Plaintiff.*

JOS. L. TEPPER,  
DAVID L. BLANKEN,  
*Attorneys for Plaintiff.*

DISTRICT OF COLUMBIA, ss:

Jos. L. Tepper, being first duly sworn on oath according to law deposes and says that I have read the foregoing petition by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true and those stated upon information and belief I believe to be true.

JOS. L. TEPPER.

Subscribed and sworn to before me this 1<sup>st</sup> day of Sept., 1931.

FRANK E. CUNNINGHAM,  
*Clerk,*

By HARRY M. HULL,  
*Ass't Clerk.*

PLAINTIFF'S EXH. "A".

No. 12168.

Recorded April 29, 1931, at 2:01 P. M.

*Deed.*

This Indenture made this 24th day of April in the year of our Lord, nineteen hundred and 31 by and between L. H. Reichelderfer, H. B. Crosby and D. A. Davison (Acting)

Commissioners of the District of Columbia, of the  
13 first part, and James S. Fraser of the second part,  
witnesseth:

Whereas, in compliance with law lot numbered 71 in square numbered 5126 in County of Washington, District of Columbia was duly assessed for taxation in the name of William Sylvester for the fiscal year hereinafter mentioned and the taxes herein named duly levied thereon;

And Whereas, the said taxes, together with the penalties and costs accruing thereon, being unpaid, and the said

property in arrears for the same, the Commissioners of the District of Columbia duly published said described property in a pamphlet as required by law, giving due notice thereof by advertisement;

And Whereas, the said commissioners did, on the Twelfth day of January 1929, the day named for the sale of said property in arrears, offer for sale and sell the same to C. L. Rout the highest bidder therefor, at and for the sum of Fifty-two dollars and sixty-eight cents (\$52.68) that being the highest sum bid for said described property, and said amount being sufficient to meet the taxes, penalties, and costs due thereon; the said lot in said square being sold to satisfy taxes, penalties, and costs due thereon as follows:

|                                                      |         |
|------------------------------------------------------|---------|
| Amount of special assessments for Sewer 2nd & 3rd    |         |
| Installment Twenty dollars and one cents . . . . .   | \$20.01 |
| Amount of interest thereon from Feb. 2, 1926 Three   |         |
| dollars and fifty-four cents . . . . .               | 3.54    |
| Amount of tax due the District of Columbia for the   |         |
| support of the government thereof for the fiscal     |         |
| year ending June 30, 1928, Twenty-five dollars and   |         |
| thirty-four cents . . . . .                          | 25.34   |
| Penalties accruing thereon Three dollars and         |         |
| twenty-nine cents . . . . .                          | 3.29    |
| Costs accruing thereon <i>dollar and fifty cents</i> | .50     |
| Amount of surplus, dollars and cents . . . . .       | ....    |
| <hr/>                                                |         |
| Amounting in all to the sum of Fifty-two dollars and |         |
| sixty-eight cents . . . . .                          | \$52.68 |

14 And Whereas, immediately after the said sale to said C. L. Rout and upon payment by him of the purchase money, the said Collector of Taxes duly issued a certificate of sale to said C. L. Rout.

And Whereas, the said C. L. Rout has duly assigned the said certificate of sale and all his right, title, and interest thereunder to James S. Fraser as is evidenced by his assignment duly endorsed on said certificate;

And Whereas, more than two years have elapsed since said sale, and the said property has not been redeemed as provided by law, the said party of the second part has become entitled to a conveyance of the premises from the parties of the first part:

Now, Therefore, this Indenture Witnesseth, that said parties of the first part by virtue of the authority conferred on them by law and for and in consideration of the premises, and the sum of one dollar, lawful money of the United States, to them in hand paid, the receipt of which—hereby acknowledged have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the second part his heirs and assigns, all the said hereinbefore described lot of ground and premises, and the appurtenances thereunto belonging or in anywise appertaining: to have and to hold the same unto the said party of the second part, his heirs and assigns forever.

In Witness Whereof, the said L. H. Reichelderfer, H. B. Crosby and D. A. Davison (Acting) Commissioners of the District of Columbia and parties of the first part, have hereunto set their hands and affixed their seals on the  
15 day and year first hereinbefore written.

[DIST. OF COL. SEAL.]

L. H. REICHELDERFER, [SEAL.]

H. B. CROSBY, [SEAL.]

D. A. DAVISON (Acting), [SEAL.]

*Commissioners of the  
District of Columbia.*

Correct:

THOMAS F. CAMERON,  
*Asst. Corporation Counsel.*

DISTRICT OF COLUMBIA, ss:

I, Daniel E. Garges, a Notary Public in and for the District of Columbia, do hereby certify that L. H. Reichelderfer, H. B. Crosby and D. A. Davison Acting, Commissioners of the District of Columbia, parties to a certain Deed bearing date on the 24th day of April 1931, and hereto annexed, personally appeared before me in said District, the said L. H. Reichelderfer, H. B. Crosby and D. A. Davison being personally well known to me as the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under my hand and seal this 24th day of April 1931.

[NOTARIAL SEAL.]

DANIEL E. GARGES,  
*Notary Public, D. C.*

Office of the Recorder of Deeds District of Columbia.

C. C., A.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 6550, folio 469, et seq., one of the Land Records of the District of Columbia.

In testimony whereof, I have hereunto set my hand and affixed the seal of this Office this 21st day of August, A. D. 1931.

[SEAL.]

JEFFERSON S. COAGE,  
*Recorder of Deeds, D. C.*

EAG.

16                      *Answer to Original Bill.*

Filed September 15, 1931.

\*                      \*                      \*                      \*                      \*                      \*

Now come the Commissioners of the District of Columbia, defendants in the above entitled cause, and for answer to the original bill filed herein show to the court as follows:

1-3. Defendants admit the averments of paragraphs one, two and three of the said bill.

4-6. Defendants say they have no knowledge of the matters and things set out in paragraphs four, five and six of the said bill and are unable to answer concerning the same.

7-10. Answering paragraphs seven, eight, nine and ten of the said bill defendants say they are officially advised, and aver upon information and belief, that the said property was in default for the payment of the real estate tax for the year ending June 30, 1928; that the assessment rolls are made each year as of the beginning of that tax year, the first day of July; that on the first day of July, 1927, the property was carried on the tax rolls in the name of William Sylvester, who was the owner of record on that date; that the property was advertised for the delinquent tax in December, 1928, and sold to Rout in January, 1929; that Rout was given a certificate of sale and assigned the same to the defendant Fraser, who, after the lapse of two years, applied for and obtained a tax deed pursuant to the statute; that the title did not pass out of the said Sylvester



until July 22, 1927, as set out in paragraphs five and seven of the bill, nor until after the tax roll for the year ending June 30, 1928, had been made up; that neither the deed of Blanken and Spector, trustees, to the plaintiff on July 22, 1927, nor the deed of the plaintiff to Jacob Dodd, on August 1, 1927, as set out in paragraphs seven and eight of the bill, had, or could have, the effect of altering the assessments made up on July first of that year, for the tax year  
17 ending June 30, 1928.

11. Answering paragraph eleven defendants say that they are advised that the first sentence of the same consists of matters of law which they are not required to answer. Further answering said paragraph, they say they have no knowledge of the correspondence set forth therein and are unable to answer the same.

12-14. Answering paragraphs twelve, thirteen and fourteen of the said bill defendants say they have no knowledge of the matters and things set forth therein and are unable to answer the same.

15. Answering paragraph fifteen defendants are advised that the same constitutes a tender on the part of the plaintiff and requires no answer from these defendants.

16. Answering paragraph sixteen of the said bill, these defendants are advised that the same consists of conclusions and requires no answer on the part of these defendants.

Having fully answered these defendants pray to be hence dismissed with their costs in their behalf incurred.

L. H. REICHELDERFER,  
H. S. CROSBY,  
D. A. DAVISON,

*Commissioners of the District of Columbia.*

WILLIAM W. BRIDE,  
*Corporation Counsel, D. C.*

F. H. STEPHENS,  
*Assistant Corporation Counsel,  
Attorneys for Defendant, the  
District of Columbia.*

DISTRICT OF COLUMBIA, ss:

Luther H. Reichelderfer, Herbert B. Crosby and John C. Gotwals, being first duly sworn, on oath depose and say,

that they have read the foregoing answer, signed and subscribed to by them, and know the contents thereof, that the matters and things therein stated as of their personal knowledge are true, and those matters and things therein stated on information and belief, they believe to be true.

L. H. REICHELDERFER,  
H. B. CROSBY,  
D. A. DAVISON,

*Commissioners of the District of Columbia.*

Subscribed and sworn to before me this 5th day of September, 1931.

[SEAL.]

ADAM A. GIEBEL,  
*Notary Public, D. C.*

*Motion to Dismiss.*

Filed November 5, 1931.

\* \* \* \* \*

Now comes the defendant James S. Fraser by his counsel, George C. Gertman, and respectfully moves the Court to dismiss the Bill of Complaint exhibited against him in the above entitled cause upon the following among other grounds apparent upon the face of the Bill:

1. The Bill does not allege that the plaintiff is in possession of the property described therein, therefore he has an adequate remedy at law by ejectment.

2. According to the allegation of the Bill the deed sought to be removed as a cloud "is a nullity and absolutely void in law", consequently it is not a cloud on plaintiff's title.

GEORGE C. GERTMAN,  
*Attorney for Defendant James S. Fraser.*

And now comes the defendant James S. Fraser by his counsel, George C. Gertman, and respectfully moves the Court to strike out of the Bill of Complaint all of paragraph numbered 11 following the name "Fraser" at the end of the eighth line, all of paragraph 12 and all of paragraph 13.

GEORGE C. GERTMAN,  
*Attorney for Defendant James S. Fraser.*

*Motion to Amend.*

Filed November 12, 1931.

\* \* \* \* \*

Now comes the plaintiff herein by and through his attorneys, Jos. L. Tepper and Davis L. Blanken, and moves this Honorable Court for leave to amend the Bill of Complaint by inserting the words, "and is in possession", in the first line of paragraph four immediately following this phrase, "the plaintiff is the record owner".

JOS. L. TEPPER,

DAVID L. BLANKEN,

*Attorneys for Plaintiff.**Order Granting Motion to Amend, &c.*

Filed November 16, 1931.

\* \* \* \* \*

Upon consideration of the motion by the plaintiff for leave to amend his bill in the manner set forth in said motion, it is this 16th day of November, 1931.

Ordered: That said motion be and hereby is granted and that said bill be considered amended as prayed in said motion.

ALFRED A. WHEAT,

*Chief Justice.**Order Overruling Motion to Dismiss and Sustaining Motion to Strike, Etc.*

Filed November 17, 1931.

\* \* \* \* \*

This cause came on to be heard upon the motion of the defendant James S. Fraser to dismiss the Bill of Complaint and upon the motion of the plaintiff to amend  
 20 the same, and permission having been given the plaintiff to amend his Bill of Complaint, as per decree passed in this cause on the 16th day of November, 1931, it is, by the Court, this 17th day of November, A. D.,

1931, ordered that said motion to dismiss be and it is hereby overruled. It is further ordered that the motion of the defendant James S. Fraser to strike out of the Bill of Complaint all of paragraph numbered 11, following the name "Fraser", at the end of the eighth line, and all of paragraphs 12 and 13, be and it is hereby granted. It is further ordered that the defendant James S. Fraser is hereby allowed ten days to answer the Bill of Complaint as amended.

ALFRED A. WHEAT,  
*Chief Justice.*

*Answer of the Defendant James S. Fraser to Amended Bill.*

Filed November 24, 1931.

\* \* \* \* \*

1. Although without knowledge of the allegations of the first paragraph of the Bill, he believes the same to be true.

2. He admits that he is an adult citizen of the United States and a resident of Takoma Park, Maryland.

3. He believes the allegations of the third paragraph of the Bill to be true.

4. He denies that the plaintiff is the record owner of the property described in the fourth paragraph of the Bill but on the contrary avers that he is the owner thereof pursuant to a deed therefor made by the Commissioners of the District of Columbia, as described in the tenth paragraph of the Bill, the same being recorded among the land records of said District in Liber 6550 at folio 469.

5. He denies that on December 15, 1926, or sometime prior thereto, the title of the property described in the fourth paragraph of the Bill stood in the names of William Sylvester and Cynthia I. Sylvester but on the contrary he avers that by deed recorded among the land records of said District on the 24th day of June, 1925, the property described in said fourth paragraph was purchased and acquired by William Sylvester and that he alone was the owner thereof at that time and on December 13, 1926.

He is without knowledge whether the said William Sylvester, the owner of the said property, and his wife, executed a deed of trust, as alleged in the fifth paragraph of the Bill, but even if they did, he says that it is immaterial.



Likewise he is without knowledge whether, as alleged in the fifth paragraph of the Bill, the said William Sylvester and his wife, Cynthia I. Sylvester, defaulted in the performance of the terms and conditions of the deed of trust therein described or that said property was sold and conveyed as therein alleged.

6. He is without any knowledge regarding the matters set forth in the sixth paragraph of the Bill and, if true, the same are immaterial, as he is informed.

7. He admits, as alleged in the seventh paragraph of the Bill, that the said William Sylvester defaulted in the payment of the taxes assessed against said property described in the fourth paragraph of the Bill, for the fiscal year ending June 30, 1928, and that said property was duly advertised and sold by the municipal authorities of the District of Columbia pursuant to law.

He denies the allegation in the seventh paragraph of the Bill that the property was listed in the names of William Sylvester and Cynthia I. Sylvester.

8. He admits that on or about January 15, 1929, said property was sold by the municipal authorities of said District for the non-payment of the general tax for the  
22 fiscal year ending June 30, 1928, and assessments levied against the same, and that there was issued to the purchaser a tax sale certificate, which certificate he denies was "wholly null and void and of no legal effect whatsoever", as alleged in the eighth paragraph of the Bill.

He denies that said real estate should have been advertised and sold in the name of Jacob Dodd.

9. He admits that the tax sale certificate was assigned to him, as alleged in the ninth paragraph of the Bill.

10. He admits that the Commissioners of the District of Columbia conveyed the aforesaid property to him in fee simple pursuant to the aforesaid sale and the aforesaid tax sale certificate, his deed being recorded in Liber 6550 at folio 469 et seq.

11. He denies that his said tax deed "is a nullity and absolutely void in law" or that it constitutes a cloud on the title of said property but on the contrary he avers that the same is valid and that by virtue thereof he is the owner of the property described therein and entitled to the possession of the same.

(Paragraphs 12 and 13 were stricken out upon motion of this defendant.)

14. The matters set forth in the fourteenth paragraph of the Bill were negotiations looking to the purchase of this defendant's title under his aforesaid deed and were mere matters of compromise and are in nowise germane to the subject matter of the suit.

15 and 16. *Answer* the fifteen and sixteenth paragraphs of the Bill he states that being the owner of the aforesaid property under the aforesaid tax deed, he informed the plaintiff what amount he would accept for a quit-claim deed but he denies that the amount he demanded was unconscionable, inequitable, oppressive or contrary to public policy.

23 Further answering the whole of the Bill of Complaint, this defendant states that the property described in the fourth paragraph thereof was acquired by said William Sylvester by deed recorded June 24, 1925; that it was assessed for taxation on July 1, 1927, as required by law, for the taxes for the fiscal year ending June 30, 1928, in the name of said William Sylvester, he being the record owner thereof on July 1, 1927; that the said tax not having been paid, said property was advertised for sale therefor in the name of the said William Sylvester, to whom it was assessed, as aforesaid, and it was sold on or about January 15, 1929, in the name of said William Sylvester, and this defendant avers that the said assessment and the advertisement and sale of said property in the name of the said William Sylvester were made and done in accordance with the Acts of Congress governing the same and governing the assessment, advertisement and sale of said property, and that it is entirely immaterial who acquired title to the said property subsequent to the assessment thereof by the municipal authorities of said District for the year ending June 30, 1928.

This defendant therefore expressly denies that the tax sale certificate and the tax deed described in the Bill of Complaint are void or voidable for the reasons stated in the Bill.

And now having answered the whole of said Bill, this defendant prays that the same be dismissed with costs to be taxed against the plaintiff.

JAMES S. FRASER.

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the foregoing Answer by me subscribed and I know the contents thereof; that the facts therein stated I verily believe to be true.

JAMES S. FRASER.

24 Subscribed and sworn to before me this 24th day of November, A. D., 1931.

[SEAL.]

THERESA BUCKHANTZ,

*Notary Public, D. C.*

GEORGE C. GERTMAN,

*Attorney for Defendant.*

*Memorandum of Court.*

Filed May 11, 1933.

\* \* \* \* \*

This matter having been heard on the bill of the plaintiff and the answers of the respective defendants thereto and after argument by counsel and consideration thereof, the Court is of the opinion that neither the tax sale by the Commissioners nor the tax deed issued by them in pursuance of said sale was null and void and of no legal effect. Therefore the relief prayed in the bill will be denied and the same will be dismissed with costs.

PEYTON GORDON,

*Justice.*

May 11, 1933.

*Findings of Fact.*

Filed June 19, 1933.

\* \* \* \* \*

The plaintiff having set this cause down to be heard upon the bill and answer, I find:

1. That the property in question was, according to the land records of the District of Columbia, owned on July 1, 1927 by William Sylvester.

2. That prior to July 1, 1927, to wit, December 24, 1926, William Sylvester and his wife by a deed of trust conveyed said property to David L. Blanken and Sophia E. Spector, as trustees, to secure the payment of \$4,500.



25        3. That on July 8, 1927, Blanken and Spector, as trustees, foreclosed said deed of trust and on July 22, 1927, said trustees conveyed said property to plaintiff who was the purchaser at the foreclosure sale.

4. That on August 1, 1927 plaintiff and his wife conveyed said property to Jacob Dodd, the deed being recorded August 16, 1927.

5. That Jacob Dodd by deed of trust recorded August 16, 1927 conveyed the property to Simon Flegman and Hyman Goldblatt, as trustees, to secure a debt of \$5,070.

6. That default occurred under the last mentioned deed of trust and on September 28, 1929, the trustees, Flegman and Goldblatt, by deed recorded that day conveyed the property to Lucille Veach who by deed recorded August 31, 1931 conveyed said property to plaintiff.

7. That said property was assessed for taxation on July 1, 1927 for the taxes for the fiscal year ending June 30, 1928 in the name of said William Sylvester; Jacob Dodd not having acquired the record title thereto until August 16, 1927.

8. That the said tax not having been paid, said property was advertised for sale therefor in the name of said William Sylvester to whom it was assessed, and it was sold on or about January 15, 1929 for said unpaid tax in the name of said William Sylvester.

9. That said tax sale was made to Charlton B. Rout who assigned his interest in the sale to the defendant James S. Fraser, and on January 15, 1931 the Commissioners of the District of Columbia issued to him a deed therefor.

10. That plaintiff by his bill of complaint contends that the advertisement of the said property for the nonpayment of taxes for the fiscal year ending June 30, 26        1928 should not have been in the name of William Sylvester, the person in whose name it was assessed, but in the name of Jacob Dodd who became the record owner thereof on August 16, 1927 and in whose name the record title stood until December 28, 1929.

11. That I do not agree with plaintiff's view and I find that the assessment of the said property in the name of William Sylvester for the taxes for the fiscal year ending June 30, 1928, and the advertisement and sale thereof in his name were made and done in accordance with the Acts



of Congress governing the assessment, advertisement and sale of property.

12. I also find that the statutes governing the assessment, advertisement and sale of property for taxes do not require that property should be advertised for sale in the name of any person other than the one in whose name it is assessed.

*Conclusions of Law.*

For the reasons stated in the foregoing findings of fact which are made a part thereof, and for the further reason that the case was set down by the plaintiff to be heard upon bill and answer, I find as a matter of law that the plaintiff has not sustained his alleged cause of action and is not entitled to relief upon the ground assigned, and an appropriate decree will be made, after notice, dismissing the bill with costs.

PEYTON GORDON,  
*Justice.*

*Decree Dismissing Bill of Complaint.*

Filed June 19, 1933.

\* \* \* \* \*

This cause came on to be heard at this term, it having been set down by the plaintiff to be heard upon bill and answer, and the same having been duly considered  
27 by the Court after argument by counsel for the respective parties, it is, by the Court, this 19th day of June, A. D. 1933, adjudged, ordered and decreed that the sale of Lot Seventy-one (71) in Owen H. Fowler's subdivision of lots in Square Fifty-one Hundred and Twenty-six (5126), being part of the tracts of land called "Beall's Adventure" and "Fife Enlarged" in the County of Washington, District of Columbia, as per plat recorded in the office of the Surveyor for said District in Liber 51 at folio 27, made on January 15, 1929, for the general real estate tax for the fiscal year ending June 30, 1928, is valid, and therefore the relief prayed by the plaintiff is denied and the bill of complaint is dismissed with costs in favor of the defendant James S. Fraser against the plaintiff and for which he may have execution as provided by law.

PEYTON GORDON,  
*Justice.*

The plaintiff in open Court notes an appeal to the Court of Appeals of the District of Columbia and his bond on such appeal is fixed at \$100 for costs or \$200 to operate as a supersedeas.

PEYTON GORDON,  
*Justice.*

*Memorandum.*

June 27, 1933.—Bond on Appeal for \$100 approved and filed.

*Assignment of Errors.*

Filed July 5, 1933.

\* \* \* \* \*

1. The court erred in holding that the advertisement of the property involved in these proceedings in the name of Wm. Sylvester in Dec., 1928, when the title therein was of record in Jacob Dodd since August 16, 1928, was in compliance with the Acts of Congress governing the sale of real estate for nonpayment of taxes.

2. The court erred in holding that the sale of said property on Jan. 15, 1929, pursuant to above advertisement was a compliance with said Acts of Congress.

3. The court erred in holding that the assessment of said real estate in the name of Wm. Sylvester in December, 1928, and January, 1929, after he had been divested of the title thereto in August, 1928, by an instrument of record, was a proper and legal assessment within contemplation of law as defined in said Acts of Congress.

4. The court erred in holding that the deed executed and delivered by the defendants, the Commissioners of the D. C., to the defendant, Fraser, was a valid, sufficient and legal instrument.

5. The court erred in holding that because the case was set down for hearing on Bill and Answer, there must be a finding for the plaintiff.

6. The court also erred in not having reset the case for hearing and directing proof to be taken if in his judgment

the facts admitted by the pleadings were inadequate for a proper judicial determination of the issues raised.

JOS. L. TEPPER,  
DAVID L. BLANKEN,  
*Attorneys for Plaintiff.*

*Designation of Record.*

Filed July 7, 1933.

\* \* \* \* \*

The Clerk will please include in the Record on Appeal herein the following:

1. Original Bill of Complaint and Exhibit consisting of deed from D. C. Commissioners to defendant, Fraser.
2. Answer of D. C. Commissioners to Bill of Complaint.
3. Motion by defendant, Fraser, to dismiss Bill and strike certain portions thereof.
4. Motion by plaintiff for leave to amend Bill.
5. Order granting leave to amend Bill of Complaint.
6. Order overruling Motion to dismiss and sustaining Motion to strike certain paragraphs of Bill of Complaint.
7. Answer of defendant, J. S. Fraser, to Amended Bill of Complaint.
8. Memorandum of Justice Gordon.
9. Finding of Facts.
10. Decree dismissing Bill of Complaint.
11. Assignment of Errors.
12. This Designation.

JOS. L. TEPPER,  
DAVID L. BLANKEN,  
*Attorneys for Plaintiff.*

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 29, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 53341 in Equity, wherein Jos.

L. Tepper is Plaintiff and James S. Fraser and L. H. Reichelderfer, H. B. Crosby and J. C. Gotwals, Commissioners of the District of Columbia, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 29th day of August, 1933.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,

*Clerk,*

By CHAS. B. COFLIN,

*Assistant Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 6062. Jos. L. Tepper, appellant, vs. James S. Fraser, L. H. Reichelderfer, H. B. Crosby, J. C. Gotwals, Commissioners of the District of Columbia. Court of Appeals, District of Columbia. Filed Sep. 5, 1933. Henry W. Hodges, Clerk.





DEC 4-1933

*Thos. H. Blanton*

CLERK

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IN THE

**Court of Appeals, District of Columbia**

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No. 6062.

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JOS. L. TEPPER, *Appellant*,

*vs.*

JAMES S. FRASER, ET AL., *Appellees.*

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JOS. L. TEPPER,  
DAVID L. BLANKEN,  
*Attorneys for Appellant,*  
416 5th St., N. W.



IN THE  
**Court of Appeals, District of Columbia**

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No. 6062.

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JOS. L. TEPPER, *Appellant*,

*vs.*

JAMES S. FRASER, ET AL., *Appellees*.

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**STATEMENT OF FACTS.**

This is an appeal from a decree of the lower court dismissing plaintiff's bill to cancel a tax deed to lot 71, square 5126, D. C. (more fully described in the bill of complaint), to the defendant, Fraser, by the defendants, the Commissioners of the District of Columbia, on April 24, 1931, as a result of a tax sale on Jan. 15, 1929, for the non-payment of taxes for the fiscal year beginning July 1, 1927, and ending June 30, 1928. The bill of complaint together with the answers of the defendants, disclose the following facts:



On July 1, 1927, title to the property was in the name of William Sylvester, and on July 6, 1927, there was a foreclosure thereon by Blanken and Spector, as Trustees, for default under a previous trust for the benefit of the appellant. This foreclosure was consummated by a deed from the said Blanken and Spector as Trustees to the plaintiff recorded July 22, 1927, in the land records of the District of Columbia, so that title to the real estate was divested from Sylvester on July 22, 1927. On Aug. 1, 1927, the appellant and his wife conveyed the property to one Jacob Dodd by deed recorded August 16, 1927, and on the same day the said Dodd executed a deed of trust to Flegman and Goldblatt to secure the appellant in the sum of \$5,070.00 (rec. p. 3-4). The property stood in the name of the said Jacob Dodd from Aug. 16, 1927, to Sept. 28, 1929, when after default, there was a foreclosure against said Dodd, as a result of which the property by mesne conveyance was again vested in the plaintiff on Aug. 31, 1931.

The taxes for the fiscal year beginning July 1, 1927, and ending June 30, 1928, were not paid by Dodd, the then record owner, and the property was advertised as against William Sylvester for non-payment of taxes Dec. 12, 1928, and sold on Jan. 15, 1929, to one C. B. Rout for \$52.68, and thereafter the said Rout assigned his rights in the tax certificate to the appellee, Fraser, who on the 24th day of April, 1931, obtained a tax deed for same which deed was recorded on April 29, 1931 (rec. p. 4).

On Aug. 26, 1931, the appellant immediately upon being apprised of the tax deed made a tender to Fraser of the cash sum of \$75.00 at first and upon his refusal to accept that sum, tendered \$100.00 for the execution

of a quit-claim deed, although the consideration for the tax deed paid to the District of Columbia was only \$52.68; but the said Fraser refused anything less than \$297.50 (rec. p. 10).

It is further shown by the pleadings that although Wm. Sylvester had been divested of his title to the real estate in question on July 22, 1927, the property continued to be assessed in his name during all of 1927 and 1928 down to and including Jan. 15, 1929, when the tax sale was made. In the interim, the property had been conveyed to the appellant who in turn conveyed it to Jacob Dodd in whose name the title stood until Dec. 28, 1929, past the period when taxes were in arrears July 1, 1928, and during the period when the property was advertised for sale on Dec. 12, 1928, and actually sold on Jan. 15, 1929, so that both the advertisement and sale were made against William Sylvester who had lost any interest in the property and who was neither the legal, equitable or beneficial owner thereof, nor did he have possession of same.

The issues in the case, therefore, resolve themselves into two propositions:

- A. Was there a compliance with Section 791, D. C. Code in regard to assessment of real estate on which taxes are in arrears?
- B. Was there a compliance with law in regard to notice to the real owner of the property of the proposed tax sale?

### **ASSIGNMENT OF ERRORS.**

1. The court erred in holding that the advertisement of the property involved in these proceedings in the name of Wm. Sylvester in Dec., 1928, when the

title therein was of record in Jacob Dodd since Aug. 16, 1928 (typographical error—should be 1927) was in compliance with the Acts of Congress governing the sale of real estate for nonpayment of taxes.

2. The court erred in holding that the sale of said property on Jan. 15, 1929, pursuant to above advertisement was a compliance with said Acts of Congress.

3. The court erred in holding that the assessment of said real estate in the name of Wm. Sylvester in Dec., 1928, and Jan., 1929, after he had been divested of the title thereto in August, 1928, by an instrument of record, was a proper and legal assessment within contemplation of law as defined in said Acts of Congress.

4. The court erred in holding that the deed executed and delivered by the defendants, the Commissioners of the D. C., to the defendant, Fraser, was a valid, sufficient and legal instrument.

5. The court erred in holding that because the case was set down for hearing on Bill and Answer, there must be a finding for the plaintiff.

6. The court also erred in not having reset the case for hearing and directing proof to be taken if in his judgment the facts admitted by the pleadings were inadequate for a proper judicial determination of the issues raised.

## ARGUMENT.

Before approaching the main question as to whether there was compliance with the law on either or both of the phases suggested in the statement of facts, it might be pertinent to inquire as to the attitude of the courts on the construction to be given to tax deeds in general so as to furnish a guide to the proper interpretation of the facts and law in the case at bar.

An examination of the authorities point to the indisputable conclusion that because of the serious and grave results to the property owner from the summary procedure in tax sales and tax deeds, the courts have sought zealously to protect the rights of the owner and have given tax sales and deeds a very rigid and strict construction as against the tax purchaser.

Tax deeds must be strictly construed against grantee and in favor of the taxpayer.

61 C. J. 1365, Section 1940.

City of Washington vs. Pratt, 8 Wheaton 681.

Rainey vs. Lamb Hardwood Lumber Co., 45 So. 367.

Sales of real estate for the payment of taxes are made in the execution of powers conferred by statute, under proceedings which are in a great measure *ex parte* of which the persons to be affected by them have by law only constructive notice. To render them valid, divesting the owner of his estate, there must be a rigid adherence to the directions and forms of the statute, especially when these are intended for the protection and benefit of the owner.

Milner & Co. vs. Clarke, 61 Ala. 258.



With this principle as a guide and with the facts in this case clear in our mind as set forth in the STATEMENT OF FACTS and in the record, let us apply the law governing it.

### POINT ONE.

#### (Covering Assignment of Errors 1 and 2.)

Section 791 of the D. C. Code provides *inter alia*:

The assessor of the District of Columbia shall prepare a list of all taxes on real property in said District subject to taxation on which said taxes are levied and *IN ARREARS* on the first day of July of each year hereafter; and the commissioners of said district shall fix date of sale. The notice of sale and the delinquent tax list shall be advertised once a week for two weeks in the regular issue of one morning and one evening newspaper published in the District of Columbia, etc.

It is apparent that the principal error of the lower court is the construction it apparently placed on the phrase, "on which said taxes are levied and in arrears on the first day of July of each year hereafter".

The Act of Congress of July 3, 1926, 44 U. S. Stat. at Large 833, Sec. 5, provides *inter alia*:

"All real estate taxes shall be payable semi-annually in equal instalments in the months of September and March, and if either of said instalments shall not be paid within the months when due and payable said instalments shall thereupon be in arrears and delinquent, and there shall be added, to be collected with such tax, a penalty at the rate of 1 per cent per month upon the amount thereof for the period of such delinquency, and the whole shall constitute a delinquent tax to be dealt with and collected in the manner now provided by law".

It is clear from the undisputed facts in this case that there were no taxes in arrears on the first day of July, 1927, when the property was assessed and title was in William Sylvester. The taxes for the non-payment of which the tax sale was advertised started to accrue July 1, 1927. Under the above Act of Congress, the first half was payable in September, 1927, and the second in March, 1928, and could not have been in arrears before those respective dates as to each half. After these dates they were only subject to penalties of 1 per cent a month to the end of the fiscal year, June 30, 1928, at which time and not before could the taxes be deemed in arrears. At that time, William Sylvester had been divested of any title, right or claim in or to the property for eleven months and eight days according to the admitted facts. It is, therefore, clear that the Assessor of the District in this instance utterly failed in respect to the parcel of real estate involved in this case, to comply with Section 791 of the Code. There is no deviation whatsoever from the authorities both federal and state that failure to have the property properly assessed in the name of the owner renders a tax sale and tax deed absolutely void.

Rich vs. Braxton, 158 U S. 375.

Bird vs. Benlisa, 142 U. S. 664.

Goodlett vs. Goodman, 192 Fed. 775.

In City of Washington vs. Pratt, 8 Wheat. 681, the court held:

“Under the 8th Section of the Act of 1812 to amend the Act for the incorporation of the City of Washington, a sale of unimproved squares or lots in the city for the payment of taxes is illegal unless such square and lots have been assessed to the true and lawful proprietors thereof.”

The state courts have likewise uniformly supported that position, thus:

*“A sale of land for the taxes due thereon \* \* \* only conveys to the purchaser the title of the person in whose name it is assessed; and if the land be assessed in the name of a person who has no interest in it, no title will be acquired by the purchaser.*

Dunn vs. Winston, 31 Miss. 135.

To support a tax sale and deed there must be a valid assessment—one that will impart full notice to the owner or taxpayer and make the proceedings due process of law.

Male vs. Moore, 74 S. E. 685. (Sup. Ct. of Appeals, W. Va. 1912.)

In the above case property stood in the name of “Hornbrook” but assessed as “Hoonbrook”.

To the same effect are the following decisions:

Emerie vs. Alvorado, 27 P. 356 (Assessment in name of “Castero” instead of “Castro” was held void).

McLeod vs. William, 74 So. 408.

Board vs. Boger, 125 N. E. 768.

Cordill vs. Realty Co., 58 So. 819.

Barker vs. Blake, 36 Me. 433.

St. Lewis vs. Wenneker, 47 S. W. 105.

Glynn vs. Maxfield, 75 N. H. 482.

State vs. Vanderbilt, 33 N. J. L. 38.

Ritter vs. Worth, 58 N. Y. 627.

Hodgkin vs. Boswell, 63 Ore. 589 (assessment in name of “E. F. Hodgkin” instead of “Frank E. Hodgkin” was held void).

Trust Co. vs. Fricke, 152 Pa. 231.

Anderson vs. Post, 38 S. W. 283.

Vestal vs. Morris, 39 P. 960.

Hecht vs. Boughton, 2 Wyo. 385.

**POINT TWO.****(Covering Assignment of Errors 2 and 4.)**

The second contention of the appellant is, namely, that the real owners of the property when it was advertised for sale for non-payment of taxes, Dec. 12, 1928, when the sale was actually made Jan. 15, 1929, and when the tax deed was delivered to the defendant, Fraser, April 24, 1931, never had any notice as required by law, is closely linked with the first proposition as to improper assessment and the inevitable result of the irregularity in that respect. It is obvious that that made it impossible for the District of Columbia to have complied with the law in respect to notice to the real owners as well as all other subsequent actions required of them by law and this likewise renders the tax sale and tax deed absolutely void. On this proposition, the cases are also uniform both federal and state.

The leading cases in this jurisdiction are *King vs. Kann*, 25 D. C. App. 185, and *Bursey vs. Lyon*, 32 D. C. Appeals, 231.

In the case of *King vs. Kann*, the court said:

“Provision is made by the statute, perhaps inadequate provision, for the ascertainment by the taxing officers of the names of the owners of property for this purpose of assessment.”

And further:

“Again, in the Act of Congress of February 28, 1898, 30 Stat. At Large 250, cap. 32, 3, which regulates the matter of tax sales in this District, there is a provision that, within twenty days after the last day of sale, the collector of taxes shall file in the office of the recorder of deeds for the District a



report in writing in which he shall give a statement of the property sold, the names of the persons to whom it is assessed, the amount of taxes due thereon, the name of the person to whom it has been sold, the amount for which it has been sold, the cost of sale, the date of sale, and the surplus, if any. The purpose of all this is very plain. IT WAS TO GIVE FURTHER AND EXPLICIT NOTICE TO THE CITIZEN WHOSE PROPERTY WAS AFFECTED AND WAS ABOUT TO BE TAKEN FROM HIM, TO WARN HIM OF HIS DANGER, and to give ample information as to what was required to be done in order that he might relieve his property from its predicament. Under this act he is entitled to have all the details of the statute strictly complied with; and a failure of such compliance may suffice to vitiate all the subsequent proceedings.”

As its authority, the court cited:

Washington vs. Pratt, 8 Wheat. 681.  
Marx vs. Hanthorn, 148 U. S. 72.

It is obvious that in this case, even if all of the above requirements were complied with, they were in respect to the wrong person, namely, Sylvester and not Dodd, the then actual and record owner.

While it is true that the King vs. Kann case was reversed by the Supreme Court of the United States in 204 U. S. 43, in an exhaustive opinion, the reversal hinged on complicated and collateral questions and on the conflicting relations between the owner, a tenant, and the purchaser of the tax title who sought to oust the tenant and himself obtain a lease. The opinion from which the Chief Justice and Justice Harlan dissented, in no sense questioned the soundness of the decision of the Court of Appeals on the law governing

tax titles and tax deeds. It, as stated, went off entirely on other phases of the case. Indeed the opinion specifically says:

The paramount issue was not as assumed (by the Court of Appeals) the invalidity of the tax sale as a mere abstract question, but, we repeat, the right of the tenant to invoke at the hands of the court a determination of that question at the risk of the owner.

And in *Burseys vs. Lyon*, *supra*, the law laid down by the case of *Kam vs. King* was restated and reaffirmed.

The following from that decision is illuminating on this case (*Burseys vs. Lyon*, 32 App. D. C., 241):

In legislating upon this subject, Congress sanctioned an assessment against the owners of property in this District. The question here is whether that requirement is one that the taxing officers can ignore, and, as was done in this instance, in 1890, omit the name of the part owner, John H. Walter, and, in 1892, omit the name of the owner entirely, and assess the property in the name of a fictitious person, who does not appear, from this record, to have ever been connected with the title. Considering a statute similar to the one here in question, the court, in *Washington vs. Pratt*, 8 Wheat. 681, 5 L. ed. 714, said: "It was undoubtedly in the power of Congress to have left what latitude they pleased to the assessor in designating the owner, but if they have confined him to the necessity of determining the true owner, it is not in our power to enlarge his discretion. It may be a hardship upon the corporation, but the legislature only can decide whether that hardship shall be perpetuated or not. It must be observed that the alternative is one which would put it in the power of the

assessor to designate a mere nominal owner, a kind of casual ejector, in every case. Had Congress intended to lighten the labors of the corporation or their assessor in this respect, there were very simple means of doing it; they might have sanctioned a designation with reference to the first or last vendee of record. \* \* \* It will seldom happen that the legal estate does not, in fact, exist in the last vendee of record, or his heirs or devisees. *The name of the real party in interest must have been, in the eyes of Congress, the most awakening circumstance of the advertisement required to warn him of his danger.*” This court has held that where in the assessment of taxes, the taxing officers insert the name of a person as the owner, it is essential to support a valid tax sale upon such an assessment that the person so named shall be the real owner. *Kann v. King*, 25 App. D. C. 182. In this District, at the time here in question, by a statute in force (Abert, Comp. Stat. 519, Sec. 6), it was made the duty of the recorder of deeds and the register of wills to furnish the proper taxing officers, on or about the first Monday in January and July of each year, correct lists of all transfers of real estate appearing of record for the preceding half year. Hence, Congress took double precaution to insure the assessment of real estate in the name of the owner. When the name of the owner could not be ascertained, the law specifically provided how the assessment should be made,—in the name of “Owner unknown”. This left no discretion in the officers. The assessment must be either in the name of the true owner or vendee last of record, or by the designation “Owner unknown”. In this case neither of the requirements of the statute were followed. We are therefore of the opinion, considering the two assessments together, as we must, that the assessments were so fatally defective as to pass no right to a conveyance to the pur-

chaser at the tax sale, and, for this reason, the tax deed in question passed no title to his assigns, the plaintiff and his associates.”

On this question too the decisions of the state courts are uniform so far as our careful examination disclosed, thus:

Milner & Co. v. Clarke, 61 Ala. 258.  
 Wiley vs. Martin, 136 S. E. 151.  
 Mullins vs. Rader, 264 S. W. 1058.  
 Bartley vs. Sallier, et al., 42 So. 657.  
 Coombs vs. Warren, 34 Me. 89.  
 Stone vs. New England Box Co., 102 N. E. 949.  
 Dunn vs. Winston, 31 Miss. 135.  
 Burpee vs. Russell, 64 N. Y. 62.  
 Cooper vs. Hills, 171 P. 504.  
 Dowd vs. Hebrew Cong., 178 App. Div. 748 N. Y.  
 Gallishaw vs. Jackson, 99 S. C. 342.  
 Yenda vs. Wheeler, 9 Tex. 408.  
 Male vs. Moore, 74 S. E. 685.

### POINT THREE.

#### (Covering Assignment of Errors 5 and 6.)

The lower court in its “Conclusions of Law” assigns as an additional ground for refusing relief to appellant “for the further reason that the case was set down by the plaintiff to be heard upon bill and answer” (rec. p. 24). This position of the lower court is somewhat puzzling. Nowhere in the record is that question raised by either of the appellees or suggestion of the court except as stated in the above “Conclusions of Law”. It certainly does not appear to have hampered or embarrassed the court from making its findings of fact which are comprehensive and cover every material and essential element of this case. There is no



loophole there. An examination of all the pleadings in the case taken in their entirety utterly fails to disclose any disagreement as to any material fact. It is true that the answer of the appellee, Fraser, goes on to say that he denies certain things, as for instance in paragraph 4 (rec. p. 19), he says that he denies that plaintiff is the record owner, but that is only a conclusion of law because he says that his tax deed makes him the record owner and not the plaintiff. In paragraph 5, he denies that the property stood in the name of William and Cynthia I. Sylvester but admits the property stood in the name of William Sylvester alone which is only a correction of an obvious error in the appellant's bill and is utterly immaterial to the issues raised by this case, the correction being accepted by the appellant. The important point is that it is admitted that when the tax sale was advertised and made, the property stood in the name of a person other than the then record and/or actual owner, Jacob Dodd. All the other essential and material facts are admitted. In paragraph 15 of his answer (rec. p. 21), the defendant, Fraser, summarizes the facts and for the purpose of the issues raised in this case, they are in absolute accord with the contentions made by the plaintiff and the admission in the Answer of the Commissioners (rec. p. 15). What purpose then could have been served by setting the case down for hearing on testimony when all the facts have been admitted and the issues resolved themselves down to a question of law.

It would seem that courts should encourage the disposition of litigation with the greatest dispatch and economy of time and money both to the court and litigants. To repeat, the lower court was not hampered for lack of detail and facts to make its findings and

this appellant has no complaint whatever to make of the "Findings of Fact". As a matter of fact, he stands upon these findings and his only complaint and grievance is in the way the lower court interpreted and applied the law to these facts, and this is the only question presented by this appeal.

The law governing the question is set down in 21 C. J. page 560, Sec. 694, as follows:

On a hearing on bill, answer, and exhibits, \* \* \* the general rule is that the whole answer is to be taken as true \* \* \* the cause and effect being submitted to the court on the contention that the plaintiff is entitled to the decree prayed for in his bill \* \* \* and notwithstanding the denials of the answer. The admission of the truth of the answer extends only to the pertinent and material facts set out therein, and does not extend to matters of opinion and inferences, or to conclusions of law.

In *Stockham vs. Stockham*, 185 Pa. 339, it was similarly held that:

Where a case is set down and disposed of on bill and answer the rule is that all material and relevant averments of fact contained in and proper for answer, must be accepted as true, whether the same be responsive to the bill or independent matters for defense.

In conclusion may we respectfully call this court's attention to what may be styled the ethical and moral aspect of this case. This aspect should not be considered as irrelevant inasmuch as the case originated in a court of equity, the keeper of the conscience of the law. Briefly stated, this is the situation in a nutshell. For a sum around \$60.00 a person acquires title to a piece of real estate the undisputed value of which is \$4500.00.

When the owner awakens to the fact, he pleads with holder of the tax deed to accept \$75.00 or \$100.00 for his investment but he is told he must pay nearly \$300.00 or five or six times the sum put up by the tax purchaser. He refuses this arbitrary and extortionate demand and appeals to a court of equity, where form should be disregarded for substance and justice meted out as between citizen and citizen. He makes the substantial claim which is admitted that neither he nor the person through whom he derived his title knew anything about the tax sale nor did they have any notice either actual or constructive. Moreover, he tenders himself ready to reimburse the tax purchaser for all he invested together with all expenses, penalties and interest. What is the court's answer to his plea? A decree which validates and perpetuates the title to a \$4500.-piece of property for \$60.00. Is this not an incongruity? Conceding for the sake of argument only that the case should not have been set down on bill and answer and that for some reason not apparent on the record it became necessary that some questions of fact should be developed before a final decision could be made, was it not the clear duty of the chancellor to order the case back to the calendar for a hearing on testimony? Should a litigant be so severely penalized for a mistake of judgment, if a mistake of judgment it be? Is this equity or justice? Indeed, is it good law? We think not and confidently hope that the patent injustice of this decree will be righted.

Respectfully submitted,

JOS. L. TEPPER,

DAVID L. BLANKEN,

*Attorneys for Appellant,*

416 5th St., N. W.

DEC 19 1933

*Thurman H. Stodges*  
CLERK

IN THE  
**Court of Appeals, District of Columbia**

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No. 6062.  
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JOS. L. TEPPER,  
*Appellant,*

*vs.*

JAMES S. FRASER, ET AL.,  
*Appellees.*

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**BRIEF OF APPELLEE JAMES S. FRASER.**  
—

GEORGE C. GERTMAN,  
*Attorney for Appellee*  
*James S. Fraser.*





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**BRIEF OF APPELLEE JAMES S. FRASER.**

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**STATEMENT.**

On April 24, 1931, the Commissioners of the District of Columbia conveyed to appellee Lot 71 Square 5126 pursuant to the sale thereof for unpaid taxes in arrears for the fiscal year ending June 30, 1928, pursuant to Act of February 28, 1898, 30 Stat. c. 32, p. 250, as amended. (See Act of May 21, 1928, 45 Stat. p. 650, appropriating \$6,000 for the advertisement of notice of sale of property for taxes in arrears July 1, 1928, under the Act of February 28, 1898, as amended.)

Although the said statute directs that the tax deed—

“shall be admitted and held to be *prima facie* evidence of a good and perfect title in fee simple”—

appellee nevertheless offered several times to deed the property to the appellant if he would pay him \$297.50 (R. 5-10). Instead, however, appellant sued appellee and the Commissioners to cancel the deed and he based his suit solely upon one ground, namely, *that the property should have been advertised for sale in the name of Jacob Dodd and not in the name of William Sylvester to whom it was assessed for said unpaid tax.* (See paragraphs 8 and 11 of the Bill, R. 4, 5.)

The defendants filed their verified answers denying that the property had been improperly advertised for sale in the name of William Sylvester. (R. 15, 16, 19-22.)

Thereupon appellant elected to set the case down for hearing on Bill and answers and he thus brought himself within the rule announced by this Honorable Court in *Sheckells v. Sheckells*, 42 App. D. C., 131; *Luchs v. Christman*, 42 App. D. C. 326, and also announced by the Supreme Court of the United States in *Reynolds v. Crawfordsville Bank*, 112 U. S. 405, 409, viz.:

“The setting the case down for hearing on bill and answer is in effect a submission of the cause to the Court by the complainant, on the contention that he is entitled to the decree prayed for by his bill upon the admissions and notwithstanding the denials of the answer”.

See also 21 C. J. pp. 560, 561.

The findings of fact are accepted by the appellant as correct (R. 22-24), but he disputes the conclusions of law (Brief 14, 15).

The Court determined that the statutory provisions, in the above particular, governing the advertisement and sale of the property had been complied with and accordingly entered a decree dismissing the Bill (R. 24).

### ARGUMENT.

1. It is conceded that property can only be sold for taxes under express statutory authority. It is in the nature of an *ex parte* proceeding and consequently there must be a substantial compliance with every provision of the statute. *Burse v. Lyon*, 32 App. D. C. 231.

Inasmuch as the appellant by his Bill of Complaint attacks the validity of the advertisement and sale upon one ground only, it may be assumed that all the statutory provisions were otherwise complied with. His sole ground of attack being that the property should have been advertised for sale for the unpaid tax for the fiscal year ending June 30, 1928, in the name of Jacob Dodd and not in the name of William Sylvester to whom it was assessed for said unpaid tax in arrears. (See paragraphs 8 and 11 of the Bill, R. 4. 5.)

Appellant has not, however—

(a) Referred to any statute which requires the advertisement of property to be made in the name of any person other than the one to whom it was assessed for the unpaid tax.

(b) Cited any decision which holds that the advertisement of the property in the name of the person to



whom it was assessed for the unpaid tax is not a compliance with the statute under which the sale was made.

2. The Court found, among other facts, that the property was owned on July 1, 1927, by William Sylvester and that it was assessed on July 1, 1927, in his name for the tax for the fiscal year ending June 30, 1928 (R. 22, 23).

The assessment complied with the Act of August 14, 1894, 28 Stat. c. 287, sec. 1, p. 282, under which it was made.

3. The Court also found as facts (R. 22, 23)—

(a) That the tax for the fiscal year ending June 30, 1928, was not paid and that the property was advertised for sale therefor in the name of William Sylvester, to whom it was assessed for said tax.

(b) That the advertisement of the property for sale for the unpaid tax for the fiscal year ending June 30, 1928, in the name of William Sylvester, was made and done in accordance with the Acts of Congress governing the advertisement and sale of property for unpaid taxes.

(c) That the statute governing the advertisement and sale of property for unpaid taxes does not require property to be advertised for sale in the name of any person other than the one in whose name it is assessed for the unpaid tax.

And, as above stated, appellant points out in his brief no statute or decision in conflict with the findings of fact or the law applied, by the lower Court.

4. The advertisement and sale of the property for the unpaid taxes for the fiscal year ending June 30,

1928 (in arrears on July 1, 1928, Appellant's Brief p. 7), was made pursuant to the Act of February 28, 1898, 30 Stat. c. 32, p. 250, as amended by Act of July 1, 1902, 32 Stat. c. 1358, sec. 1, p. 632.

It will be found upon examination of the first mentioned Act (February 28, 1898) that it directs the Assessor to prepare a list of all property subject to sale on July 1st of each year for unpaid taxes in arrears, and that such delinquent list shall contain (a) a description of the property to be sold, (b) the amount of the tax and (c) the name of the person in whose name the property is assessed for the unpaid tax. It also requires that pamphlets containing said delinquent list shall be printed for distribution to the public and that notice be given by advertisement that the pamphlets are ready for distribution. This Act was amended July 1, 1902, 32 Stat. c. 1358, sec. 1, p. 632, by discontinuing the publication of the pamphlets and, in lieu thereof, directing that the delinquent list itself be advertised. The Act of May 21, 1928, 45 Stat. p. 650, which appropriated \$6,000 for advertising notice of taxes in arrears on July 1, 1928, as required to be given by the Act of February 28, 1898, as amended, contains the same provision dispensing with the publication of the pamphlets.

There is nothing in the Act of February 28, 1898, or its amendments, requiring the municipal authorities to advertise property for sale for unpaid taxes in arrears in any name other than the person in whose name the property was assessed for the unpaid tax, but, the statute itself directs that the advertised delinquent list shall contain three things,—(a) description of the property, (b) amount of the tax, and (c) the name of the person

in whose name the property is assessed for the unpaid tax.

5. The following table of dates and events is furnished for the convenience of the Court:

### **RECORD TITLE.**

December 13, 1926, record title stood in William Sylvester.

December 13, 1926, Sylvester gave deed of trust in Liber 5896 folio 306, securing \$4,500.

July 1, 1927, record title still in William Sylvester.

July 22, 1927, above trust foreclosed and property deeded to appellant.

August 16, 1927, appellant conveyed to Dodd.

August 16, 1927, Dodd gave trust for \$5,070 recorded in Liber 5930 folio 160.

September 28, 1929, above trust foreclosed and property deeded to Veach (appellant's straw, R. 3).

August 31, 1931, Veach conveyed to appellant.

### TAX AND TAX SALE.

July 1, 1927, tax assessed for the year ending June 30, 1928, in name of William Sylvester (the record owner, R. 22).

|                                                |                            |
|------------------------------------------------|----------------------------|
| First half of above tax payable September 1927 | } Appellant's Brief, p. 7. |
| Second half payable March 1928                 |                            |

July 1, 1928, above tax unpaid and in arrears. (Appellant's Brief, p. 7.)

December 12, 1928, property advertised for said tax in name of William Sylvester. (R. 3.)

January 15, 1929, property sold to Rout (who assigned to Fraser). (R. 4.)

January 15, 1931, two-year period for redemption from tax sale expired. (Act of February 28, 1898, *ante*.)

April 24, 1931, tax deed delivered to appellee Fraser.

In conclusion it is respectfully submitted that the appellant has not shown that the advertisement and sale of the property in the name of William Sylvester for the unpaid taxes in arrears for the year ending June 30, 1928, was not in accordance with the Act of Congress, and therefore the appealed decree should be affirmed with costs.

Respectfully submitted,

GEORGE C. GERTMAN,  
*Attorney for Appellee*  
*James S. Fraser.*